

REMARKS

This amendment is in response to the Office Action dated July 31, 2006 received in the above-referenced application. Applicant respectfully requests that the Examiner consider the proposed amendments to Claim 1. Claims 2, 5, 7-9, and 13 have been cancelled. Upon entry of this Amendment, Claims 1, 3, 4, 6, 10-12, and 14-15 are pending.

Claim 1 is amended to more particularly point out the subject matter of the invention. Support for the amendment is found in the specification, for example at page 3, lines 21 to 23 and in original Claim 8.

With respect to all amendments and cancelled claims, Applicant has not dedicated or abandoned any unclaimed subject matter. Applicant reserves the right to pursue prosecution of any presently excluded claim embodiments in future continuation and/or divisional applications.

The Examiner rejects Claims 1, 3-4, 6, 8, 10-12, and 14-15 under 35 U.S.C. §103(a) as allegedly unpatentable over Callegari et al. (U.S. Patent No. 6,664,186). Applicant respectfully traverses the rejections, and submits that the present claims are patentable over the cited references.

When rejecting claims under 35 U.S.C. §103(a), the Examiner bears the burden of establishing a *prima facie* case of obviousness. See, e.g., *In re Bell* 26 USPQ2d 1529 (Fed. Cir. 1993); M.P.E.P. §2142. To establish a *prima facie* case, the prior art reference must teach or suggest each and every limitation of the rejected claims. *In re Vaeck*, 20 USPQ2d 1438 (Fed. Cir. 1991); M.P.E.P. §2142.

Callegari et al. disclose a method to deposit a multilayer gate dielectric comprised of an optional upper layer, an optional lower layer, and a middle layer which is a high- κ dielectric layer. Col. 11, lines 23-51. The middle layer "is selected from the group consisting of aluminum


oxide or a multilayer structure where at least one of the layers is aluminum oxide." Col. 11, lines 42-44.

In contrast, amended Claim 1 recites a metal oxide layer atop a metal silicate layer, wherein said metal oxide includes more than one metal element. Callegari et al. does not teach or reasonably suggest a metal oxide layer which includes more than one metal element. Callegari et al. discloses either a middle layer of aluminum oxide or a multilayer middle layer where at least one of the layers is aluminum oxide. Thus, there is only one metal element, namely aluminum, present in each layer. Therefore, Callegari et al. does not teach or reasonably suggest a metal oxide layer atop a metal silicate layer, wherein said metal oxide includes more than one metal element.

Claims 3, 4, 6, 10-12, and 14-15 depend from Claim 1 and are patentable for the same reasons as Claim 1 and by reason of the additional limitations called for therein.

Applicant respectfully submits that the application is in condition for allowance. If any matters can be resolved by telephone, the Examiner is invited to call the undersigned attorney at the telephone number listed below. Commissioner is authorized to charge any additional fees to Morgan, Lewis & Bockius LLP Deposit Account No. 50-0310 (Order No. 67538-5127-US02).

Respectfully submitted,



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under 37 C.F.R. §1.34

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